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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 RANDALL DUNHAM,

12 Plaintiff,

13 v.

14 ALIASGHAR MOHYUDDIN, et al.,

15 Defendants.
16

No. 2:23-CV-2757-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel,
19 ECF No. 3.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the Court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances to request counsel. Plaintiff's motion requests an attorney because he is legally
10 blind and a vision-impaired inmate. ECF No. 3 at 1. Simply being vision-impaired does not
11 demonstrate an inability to articulate one's claims. Plaintiff, using accommodations, was able to
12 file a coherent complaint. See ECF No. 1. Should Plaintiff be denied accommodations, he may
13 re-file his request. Further, Plaintiff did not even attempt to demonstrate a likelihood of success
14 on the merits. At this early stage of litigation before discovery and dispositive motions, the
15 Plaintiff has not met his burden of showing he will likely succeed on the merits of his case.

16 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the
17 appointment of counsel, ECF No. 3, is DENIED.

18 Dated: December 13, 2023



19 DENNIS M. COTA
20 UNITED STATES MAGISTRATE JUDGE
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